

INTERNAL REVENUE SERVICE
District Director

Department of the Treasury

Person to Contact:

Telephone Number:

Refer Reply to:

DATE:

Dear Applicant:

We have considered your application for exemption from Federal Income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code.

The information you submitted disclosed that you were formed [REDACTED], under an Articles of Association and bylaws for scientific research purposes. The organization stated that it was formed to conduct scientific research on the breeding of tropical fish and invertebrates, both common and endangered species, in both freshwater and marine habitats.

According to the organization's bylaws, the organization does not have directors, officers, or shareholders. The organization is not a membership organization. The organization's bylaws state that [REDACTED], the organization's founder, representative, power of attorney, and curator, has full management and control over the operation of the institution. The bylaws further state that no person other than [REDACTED] shall be responsible in any way for any contract of the institute unless said other person personally signs and accepts said liability.

The organization's facility is located in a residence of [REDACTED]. The organization's facility and equipment are owned by [REDACTED], and [REDACTED] loans them the use of the facility but the institute will pay [REDACTED] operating expenses such as utilities, legal expenses, and other authorized expenses by [REDACTED]. The organization's facility will not be open to the public.

All the scientific research projects will be selected by [REDACTED], and conducted by [REDACTED]. The results of the above research will be offered for publication in hobby magazines rather than scientific magazines. The organization does not seek advice or opinions from other scientists in this field.

Currently, [REDACTED] is a practicing lawyer who runs a solo practice Monday through Friday 9 AM to 5 PM. [REDACTED] plans to conduct the scientific research from 6:30 AM to 7:30 AM and 7:30 PM to 10:00 PM. [REDACTED] spends his weekend equally divided between

scientific research and activities with his wife. [REDACTED] will not be paid a salary, but will be reimbursed for reasonable expenses incurred on behalf of the organization, authorized by [REDACTED].

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or operational test is not exempt.

To qualify for exemption, the organization must be a corporation, community chest, fund, or foundation. Under IRC 7701(a)(3) the term "corporation" includes associations. Thus, the typical nonprofit association formed under a constitution, an articles of Association or bylaws, with elective officers empowered to act for it, is treated as a corporation for purposes of IRC 501(c)(3).

Where the purported organization instrument is in the form of a constitution or articles of association, there should be some evidence that it was signed by people who thereby associated themselves under its terms since an association cannot be formed by a single individual, nor can articles of association be promulgated by the act of one individual. Therefore, an individual, partnership, or formless aggregation of individuals cannot qualify for exemption under IRC 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(iv) provides that an organization whose activities are not within the statute cannot be exempt by virtue of a conforming charter.

Your bylaws state that your organization does not have directors, officers, or shareholders. Your organization is not a membership organization. According to the bylaws, [REDACTED] has complete control over the organization's management and operational decisions. The organization's facility is located in the residence of [REDACTED], and will not be open to the public. Although your Articles of Association and bylaws were signed by several people pledging their support, it appears that your organization is a one-man organization, effectively blocking out public involvement. One person does not constitute an association.

Section 1.501(c)(3) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt 501(c)(3) purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(c)(3)-1(d) states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the

requirements, an organization must establish that it is not organized or operated for the benefit of private interests, such as those of its creator.

In Revenue Ruling 69-266, 1969-1 C.B. 151, an organization formed and controlled by a medical doctor to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered, is not exempt under Internal Revenue Code 501(c)(3).

Your organization was formed and controlled by [REDACTED]. Your organization's facility is located in [REDACTED]' residence. [REDACTED] claims that he does not charge rent or fees for equipment rental and the use of facility, and also does not receive a salary, however, the organization will pay [REDACTED] operational expenses and [REDACTED] will be paid reasonable expenses accrued by the organization's exempt activities. All the payments of the organization will be authorized by its curator, [REDACTED]. Therefore, [REDACTED] decides what is a reasonable and appropriate expense for the organization, and writes a check to himself. It appears that the above practice opens the doors for tremendous abuse by a person who controls the organization by serving a private interest. The organization must establish that it is not organized or operated for the benefit of private interests, such as those of its creator.

Section 1.501(c)(3)-1(d)(5)(i) provides that a scientific organization must be organized and operated in the public interest since the purposes specified in IRC 501(c)(3) are limited to public purposes. This means that organizations that primarily pursue business purposes or that serve substantial private interests are not entitled to exemption under IRC 501(c)(3) merely because they work in an area that is popularly thought of as "scientific."

Revenue Ruling 71-421, 1971-2 C.B.229, states that a dog club, exempt under section 501(c)(7) of the Code, may not be reclassified as an organization exempt from Federal income tax under section 501(c)(3) of the Code since the organization is organized and operated primarily for the benefit, pleasure, and recreation of its members.

You stated that your organization's results will be published in "hobby magazines" instead of "scientific journals" because all of the research you intend to conduct will be directed towards the hobbyist's care and management of captive fish and invertebrates. You stated that the public purpose will be best served by [REDACTED] acting as sole decision maker of selecting research projects and conducting the actual research because he is the person with the most knowledge in this field, and because he has 24 hour a day access to the facilities. You also stated that [REDACTED] has long

read on the above subjects.

██████████ does not have any formal advanced degree in science, especially in the area of tropical fish. The organization is not actively seeking advice from other scientists. ██████████ is, by training, an attorney, and currently owns a solo legal practice. ██████████ works in his practice full time Monday through Friday 9:00 AM to 5:00 PM. ██████████ conducts his research before and after his regular working hours. He has 24 hour a day access to the facility because the facility is not open to the general public, and the facility is located in ██████████ residence. Although at this point we are not questioning ██████████ lack of formal scientific training nor his knowledge on the subject, the public has no way to verify your organization's exempt purpose under section 501(c)(3) as a public charity which was formed to conduct scientific research for the benefit of the public. It appears that although there are some scientific benefits from your research, your organization was formed primary to satisfy ██████████' hobby purposes.

Therefore, based on the information submitted, we have concluded that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, inasmuch as your primary purpose is to run hobby activities for one person, the founder of the organization, for his own benefit, and not primarily a religious, charitable, educational, or scientific organization.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement, Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with the office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals, or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination.

Section 7423(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted

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Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

District Director

Enclosures:
Publication 892
Form 6018
Envelope